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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
050,083	06-19-79	Berntsson	24040

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EXAMINER	
Alan L. Rotman	
ART UNIT	PAPER NUMBER
121	7

DATE MAILED:

MAILED

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

APR 24 1980

This application has been examined. Responsive to communication filed on Feb. 13, 1980 This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited, Form PTO-892. 2. Notice of Informal Patent Drawing, PTO-948.
3. Notice of Informal Patent Application, Form PTO-152. 4.

Part II SUMMARY OF ACTION

1-11

1. Claims _____ are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims _____ have been cancelled.

3. Claims _____ are allowed.

4. Claims 1-11 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. The formal drawings filed on _____ are acceptable.

8. The drawing correction request filed on _____ has been approved. disapproved.

9. Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has

been received. not been received. been filed in parent application, serial no. _____,

filed on _____.

10. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

11. Other

The claims in this application are 1-11.

Claims 1-11 are rejected as being unpatentable over Meyer et al. of record under 35 U.S.C.103 for the reasons of record set forth in Paper No.3 dated October 10, 1979. It is worthy to note that the Meyer et al. patent supra was applied both under 35 U.S.C.102 and 103. In response thereto, applicants have cancelled from claims 1-9 certain originally claimed subject matter which could be construed as overlap with the disclosure of Meyer et al. supra.

Remarks

The formal rejections of record in Paper No.3 have been obviated by amendatory changes as per Paper No.6 dated February 13, 1980 (Applicants' Amendment "A").

The undersigned Examiner has decided to drop the Bossert and Loev references under 35 U.S.C.103 as the closest specifically disclosed prior art compounds are found in Meyer et al. supra.

Response To Arguments For Patentability

Applicants argue in Paper No.6 that the presently claimed compounds are not specifically disclosed or taught in the Meyer et al. patent and that the claimed compounds, compositions and methods of use are patentable thereover based on the 2-and 3-phenyl substituents. Applicants are accurate to argue that the closest compounds of the Meyer patent do not clearly anticipate the claimed compounds, but the Examiner disagrees as to the issue of patentability under 35 U.S.C.103. For example, it is indisputable that the Meyer patent teaches that the phenyl ring attached to the 4 position of the 1,4-dihydro-3,5-dicarboxylate nucleus contains 1-3 substituents selected from amongst lower alkyl, halogen or lower-alkoxy, in addition the concept of unsymmetrical esters is taught including lower alkenyl or lower alkynyl moieties as well as lower alkoxy-lower-alkyl. The concept of compositions and same

utility are shown for the invention described by Meyer supra. It must be concluded that applicants' claimed invention is taught or reasonably suggested by Meyer supra. It is incumbent upon applicants to submit a Declaration under the provisions of 37 C.F.R.1.132 that would be a comparative showing with at least two of the closest reference compounds, namely, the compound of Example 7 and the 2-chloro-compound found in column 4 in between lines 30-35 with the type of results that would allegedly show that the claimed compounds would possess unexpectedly superior properties over the closest reference compounds.

Applicants' citation of the prior art and the furnished references is appreciated. However, the references are not closer than the references the Examiner has relied on.

The rejection of claims 1-11 is therefore made FINAL.

Alan L. Rotman:alr
A/C 703-557-2517

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EXAMINER
GROUP ART UNIT 121